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IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. 1012

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. a corporation, etc. and CASLOV NIKITOVIC (and thirteen others),

Petitioners,

vs.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. (DIOCESE FOR EASTERN STATES OF AMERICA AND CANADA), an unincorporated association, and LOUIS VASITY, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONERS

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Introduction

This Reply Brief is filed pursuant to Rule 24, subparagraph 4, Rules of the Supreme Court of the United States. The respondents, in their Answering Brief, made certain statements of fact and arguments of law which are disputed by the petitioners. The petitioners contend that the factual and legal assertions hereinafter referred to in this reply brief, will be supported in the record, should this Court grant certiorari.

Reply to Counter-Statement of Facts and Answering Argument

Respondents maintain that the St. George Corporation is a constituent part of a hierarchical church organization (See Answering Brief, pages 1 & 6). They seek to imply that the petitioners admit that the St. George Corporation is merely a subordinate unit of a general hierarchical church organization. The petitioners make no such admission. Petitioners contend that St. George Corporation's affiliation with the Serbian Church system is through its affiliation with the Serbian American-Canadian Diocese. The respondents maintain that this diocese has been abolished. The petitioners maintain that the diocese and its constitution, through which they are affiliated with the Serbian Church, have not been abolished. They point out that this constitution is viable, and in fact controls the relationship between the Serbian Church hierarchy and the American-Canadian Diocese, and through the diocese, the St. George Church Corporation (See petitioners' Appendix F. page 42a).

Respondents argue further that this controversy centers around the alleged removal of the Serbian Bishop

Dionisije by the Serbian Church authorities (See Answering Brief, page 5). Petitioners deny this. Petitioners contend that the dispute centers around the purported abolition of the American-Canadian Diocese and its Constitution. They maintain that this attempted abolition was *ultra vires* in that it transgressed the diocesan Constitution.

Respondents point out that the decision of the New Jersey Trial Court was founded upon the reasoning of an Ohio Court in the case of *Serbian Orthodox Church Congregation of St. Demetrius v. Keleman, et al.*, 21 L. Ed. 750, 89 S. C. (1968) (See page 5 of Answering Brief). But it should be noted that in 1969 this *Keleman* case came before the Supreme Court of the United States, which remanded that case to the Supreme Court of Ohio for determination in accordance with the principle established in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U. S. 440, 21 L. Ed. 2d 658 (1969).

Respondents argue that a civil court would have to review an ecclesiastical decision to sustain petitioners' contention (See Answering Brief, page 7). This statement is incorrect. A civil court could sustain a petitioner's petition by finding:

a. The St. George Corporation is a New Jersey nonprofit corporation.

b. The St. George Corporation is affiliated with the Serbian Eastern Orthodox Church.

c. The petitioners were the duly elected trustees of said corporation.

d. The petitioners' right to hold office of trustee has never been disputed in any ecclesiastical court or other

competent body insofar as a deviation from their ecclesiastical duties is concerned.

e. Petitioners' right to hold office as trustees has never been disputed in any civil court insofar as a deviation from their civil duties is concerned.

If the Court decided the case on this basis, such a decision would be predicated upon neutral principles of law and without "establishing" a church. *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra, Mitchell et als.* v. *Albanian Orthodox Diocese in America Inc.,* 244 N. E. 2d 276 (Sup. Jud. Ct. Mass. 1969).

The respondents believe that petitioners urge an incorrect analysis of the case of the *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* Respondents appear to say that because both that case and the matter *sub judice* concern rulings of hierarchial church organization, both cases are identical. Petitioners contend that this is incidental. What is crucial is that a determination of schism was made in both cases. In *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* a jury determined that the general church had departed from the original tenants of religion, a determination of schism. In the instant case, the court determined that the petitioners had broken with the Serbian Patriarchate and thereby were operating a schismatic congregation (See petitioners' Appendix B, page 27a). Thus, both cases deal with the State's unconstitutional encroachment on the freedom of worship.

Respondents state that the trial court did not irrevocably exclude the petitioners from corporate membership and therefore did not make a determination of church

membership. (See Answering Brief, page 8). This argument is incorrect. The trial court, by requiring conditions for petitioners' membership, obviously meant that they are presently excluded. The mere fact that a court seeks to set conditions for church affiliation is clearly a First Amendment violation. Furthermore, as previously pointed out, the trial court characterized the petitioners as being part of a schismatic congregation. (See petitioners' Appendix, page 27a). The New Jersey Superior Court, Appellate Division, recognized this fact. In its opinion the Appellate Division stated (See Appendix C, p. 31a):

> "The trial judge implicitly determined, and we find the proofs support that conclusion, that appellants here qualify as followers of Biship Dionisije who thus became *schismatics.*" (emphasis supplied)

Therefore, a New Jersey Court has made a determination between two contending factions in a church dispute. This choice was predicated upon the determination of an ecclesiastical question. The court decided that the petitioners were schismatic and therefore have no right to control or be affiliated with the church corporation. The New Jersey Court and the New Jersey Courts alone have decided this question. No legitimate church authority has ever made such a determination.

CONCLUSION

Petitioner reiterates the requests made in its petition for Certiorari. It prays that this court examine the record fully rather than only the assertions of contending counsel as to what the record contains. It prays that this court reaffirm the basic tenant of the Constitution of the United States, to wit, that States may not decide ques-

tions of religious belief and that civil courts may not declare that certain acts do but other acts do not constitute ecclesiastical schism.

Respectfully submitted,

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